

AGENDA MEMO

CITY COUNCIL MEETING OF: DECEMBER 2, 2009

DEPARTMENT: PLANNING AND DEVELOPMENT

**ITEM DESCRIPTION: VAR-35857 - APPLICANT: FIDENCIO GARCIA - OWNER:
WETHERBEE PROPERTIES, LLC**

**** CONDITIONS ****

Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL, subject to condition.

Planning and Development

1. This approval shall be void one year from the date of final approval, unless a business license has been issued to conduct the activity, if required, or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

**** STAFF REPORT ****

PROJECT DESCRIPTION

This is a request for a Variance to allow 105 parking spaces where 113 parking spaces are required at an existing Restaurant on 2.14 acres at 941 North Pecos Road. The applicant is proposing to expand the existing dining facility space (941 North Pecos Road) into an adjacent tenant space (943 North Pecos Road), increasing the total floor area of the restaurant by 800 square feet. The expansion would increase the amount of parking needed for the subject use by eight spaces. The applicant has created a self-imposed hardship that could be alleviated through alternative site location; staff is recommending denial. If denied, the existing restaurant will remain unaltered.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc and Property Sales</i>	
10/22/96	The Board of Zoning Adjustment approved a request to withdraw a Special Use Permit (U-102-96) on property located at 901 North Pecos Road to allow on-premise beer and wine sales in conjunction with a proposed restaurant.
10/22/96	The Board of Zoning Adjustment approved a request for a Variance (V-145-96) on property located at 901 North Pecos Road to allow 122 parking spaces where the existing and proposed uses required 130 spaces.
03/24/97	The City Council approved a request for a Special Use Permit (U-150-96) on property located at 901 north Pecos Road to allow on-premise beer and wine sales in conjunction with a proposed restaurant and a waiver of the min. 400-foot distance separation requirement for a church and park. The Board of Zoning Adjustment recommended approval.
09/29/03	The Planning and Development Department approved a request for Administrative Approval to allow the placement of two (2) wireless antennas on the existing rooftop of the building at 901 North Pecos Road.
12/26/08	A deed was recorded for change of ownership.
11/05/09	The Planning Commission voted 7-0 to recommend APPROVAL (PC Agenda Item #19/ao).
<i>Related Building Permits/Business Licenses</i>	
07/16/01	A business license (C07-02750) was issued for a clothing and gifts store at 943 North Pecos Road. The business license was marked out of business on 02/13/09.
12/13/02	A business license (R07-00571) was issued for a restaurant at 941 North Pecos Road. The business license was marked out of business on 07/05/06.
05/31/03	A building permit (#2011930) was issued for tenant improvement certificate of occupancy at 941 North Pecos Road. The permit expired on 05/31/03.
01/04/06	A business license (R07-00707) was issued for a restaurant at 941 North Pecos Road. The business license is still active.

<i>Pre-Application Meeting</i>	
08/10/09	<p>A pre-application meeting was held with the applicant where elements of submitting a Variance were discussed. Topics included:</p> <ul style="list-style-type: none"> • The applicant's provision of an accurate square footage of the expansion area showing the amount of public seating, waiting area and remaining gross floor area needed for parking calculation. • The provision of a parking analysis for the entire retail development so the parking requirement for the development can be determined.
<i>Neighborhood Meeting</i>	
A neighborhood meeting was not held, nor was one required.	

<i>Field Check</i>	
09/17/09	<p>A field check was carried out by staff with the following observations:</p> <ul style="list-style-type: none"> • There is an existing restaurant in operation within the 21,720 square-foot commercial plaza. The adjacent space was vacant. There no other restaurant in the plaza. • There is a code violation of non-permitted banners and signage above the main entrance and on the display windows. These violations have been referred to Code Enforcement.

<i>Details of Application Request</i>	
<i>Site Area</i>	
Net Acres	2.15

Surrounding Property	Existing Land Use	Planned Land Use	Existing Zoning
Subject Property	Shopping Center	SC (Service Commercial)	C-1 (Limited Commercial)
North	Apartments	M (Medium Density Residential)	R-3 (Medium Density Residential)
South	Public Facility	PR-OS (Parks / Recreation / Open Space)	C-V (Civic)
East	Single Family Residence	L (Low Density Residential)	R-1 (Single Family Residential)
West	Apartments	M (Medium Density Residential)	R-3 (Medium Density Residential)

<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Area Plan		X	N/A
<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Purpose and Overlay Districts		X	Y
Trails	X		Y

Rural Preservation Overlay District		X	N
Development Impact Notification Assessment		X	N
Project of Regional Significance		X	N

DEVELOPMENT STANDARDS

Pursuant to Title 19.10, the following parking standards apply:

<i>Use (943 N. Pecos Rd.)</i>	<i>Gross Floor Area or Number of Units</i>	<i>Required Per Current Title 19.04 Standards</i>	
		<i>Parking Ratio</i>	<i>Parking</i>
			Regular
Retail (current use)	800 SF	1/250 SF	4
Restaurant (proposed expansion)	500 SF	1/50 SF public seating/waiting	10
	300 SF	1/200 SF remaining floor area	2
SubTotal	800 SF		12
Additional required parking spaces subject to this Variance request			8

ANALYSIS

The applicant is proposing to expand the existing dining facility (941 North Pecos Road) into an adjacent tenant space (943 North Pecos Road); without adding any additional parking facilities at a site that is already considered to be parking impaired. This will result in a deficit of eight parking spaces, or a 5% deviation from the requirements. There is illegal signage, including banners, at the subject site. The violations have been referred to Code Enforcement. The proposed Variance is a self imposed hardship; therefore, denial of this request is recommended.

FINDINGS

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.18.070L states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by proposing to expand a use that is too intense for the existing site to accommodate. A less intense use would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED

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NOTICES MAILED

385 by City Clerk

APPROVALS

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PROTESTS

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